IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CLARA

THE	PF(PI	Æ

PLAINTIFF AND RESPONDENT

VS

COURT OF APPEAL NO.:

STEVE KENT BADUE

DEFENDANT ANDAPPELLANT

VOL. 1

of

PAGES 1

thru 106

CLERK'S TRANSCRIPT ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA

SUPERIOR COURT NUMBER: CC241061

HONORABLE

RISE J. PICHON , JUDGE

APPEARANCES

ATTORNEY GENERAL 455 GOLDEN GATE AVENUE ROOM 11000 SAN FRANCISCO, CA 94102

COUNSEL FOR PLAINTIFF AND RESPONDENT

MAY - 1 2003

SIXTH DISTRICT APPELLATE PROGRAM 100 NORTH WINCHESTER BLVD, SUITE 310 SANTA CLARA, CA 95050

COUNSEL FOR DEFENDANT AND APPELLANT

NOTICE OF APPEAL FILED _____ March 6, 2003

NOTICE OF COMPLETION

APR 2 5 2003

	INDEX TO CLERK'S TRANSCRIPT	PAGE	VOL.
1	PRELIMINARY EXAMINATION TRANSCRIPT OF 10/02/02	1	1
2	PRELIMINARY EXAMINATION MINUTES, COMMITMENT CERTIFICATION, OF 10/02/02	17	1
3	FELONY COMPLAINT	18	1
4	FELONY CASE SUMMARY	20	1
5	INFORMATION	21	1
6	FINGERPRINT FORM	24	1
7	CLERK'S MINUTES OF 10/15/02	25	1
8	CLERK'S MINUTES OF 12/02/02	26	1
9	CLERK'S MINUTES OF 12/03/02	27	1
10	LETTER TO DR. JAMES MISSETT, PH.D. IN RE: APPOINTMENT AS MEDICAL EXAMINER UNDER SECTION 1369(a) OF THE PENAL CODE	28	1
11	CLERK'S MINUTES OF 12/04/02	29	1
12	CLERK'S MINUTES OF 12/24/02	30	1
13	CLERK'S MINUES OF 01/08/03	31	1
14	MEDICAL / PSYCHIATRIC EXAMINATION UNDER SECTION 1369(a) OF THE PENAL CODE (SEALED)	32	. 1
15	CLERK'S MINUTES OF 01/16/03	39	1
16	PEOPLE'S PROPOSED VOIR DIRE QUESTIONS	40	1
17	TRIAL BRIEF	46	1
18	MOTIONS IN LIMINE	53	. 1
19	CLERK'S MINUTES OF 02/03/03	57	. <u>1</u>
20	CLERK'S MINUTES OF 02/03/03	58	1
21	CLERK'S MINUTES OF 02/03/03	59	1
22	CLERK'S MINUTES OF 02/05/03	61	1
23	CLERK'S MINUTES OF 02/05/03 (AMENDED ORDER)	62	· 1

24	CLERK'S MINUTES OF 02/05/03	63	1
25	PROBATION OFFICER'S REPORT	66	1
26	CLERK'S MINUTES OF 03/06/03	90	1
27	ABSTRACT OF JUDGMENT - PRISON COMMITMENT - DETERMINATE - SINGLE, CONCURRENT OR FULL-TERM CONSECUTIVE COUNT FORM	91	1
28	NOTICE OF APPEAL	92	1
29	MOTION TO APPOINT COUNSEL (GC15421)	93	1
30	DEERING'S CALIFORNIA CODES ANNOTATED	94	1
31	NOTICE TO COURT REPORTERS RE: APPEALS	103	1
32	NOTICE OF FILING NOTICE OF APPEAL	104	1
33	NOTICE OF COMPLETION	105	1
34	CLERK'S CERTIFICATION	106	1

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	INDEX TO CLERK'S TRANSCRIPT	PAGE	VOL.
1	ABSTRACT OF JUDGMENT - PRISON COMMITMENT - DETERMINATE - SINGLE, CONCURRENT OR FULL-TERM CONSECUTIVE COUNT FORM	91	1
2	CLERK'S CERTIFICATION	106	1
3	CLERK'S MINUES OF 01/08/03	31	1
4	CLERK'S MINUTES OF 01/16/03	39	1
5	CLERK'S MINUTES OF 02/03/03	57	1
6	CLERK'S MINUTES OF 02/03/03	59	1
7	CLERK'S MINUTES OF 02/03/03	58	1
8	CLERK'S MINUTES OF 02/05/03	61	1
9	CLERK'S MINUTES OF 02/05/03	63	1
10	CLERK'S MINUTES OF 02/05/03 (AMENDED ORDER)	62	1
11	CLERK'S MINUTES OF 03/06/03	90	1
12	CLERK'S MINUTES OF 10/15/02	25	. 1
13	CLERK'S MINUTES OF 12/02/02	26	1
14	CLERK'S MINUTES OF 12/03/02	27	1
15	CLERK'S MINUTES OF 12/04/02	29	1
16	CLERK'S MINUTES OF 12/24/02	30	1
17	DEERING'S CALIFORNIA CODES ANNOTATED	94	1
18	FELONY CASE SUMMARY	20	1
19	FELONY COMPLAINT	18	1
20	FINGERPRINT FORM	24	1
21	INFORMATION LETTER TO DR. JAMES MISSETT, PH.D. IN RE: APPOINTMENT AS	21	1
22	MEDICAL EXAMINER UNDER SECTION 1369(a) OF THE PENAL CODE MEDICAL / PSYCHIATRIC EXAMINATION UNDER SECTION 1369(a) OF THE	28	
23	PENAL CODE (SEALED)	32	2

24	MOTION TO APPOINT COUNSEL (GC15421)	93	1
25	MOTIONS IN LIMINE	53	1
26	NOTICE OF APPEAL	92	1
27	NOTICE OF COMPLETION	105	1
28	NOTICE OF FILING NOTICE OF APPEAL	104	1
29	NOTICE TO COURT REPORTERS RE: APPEALS	103	1
30	PEOPLE'S PROPOSED VOIR DIRE QUESTIONS	40	1
31	PRELIMINARY EXAMINATION MINUTES, COMMITMENT CERTIFICATION, OF 10/02/02	17	1
32	PRELIMINARY EXAMINATION TRANSCRIPT OF 10/02/02	1	1
33	PROBATION OFFICER'S REPORT	66	1
34	TRIAL BRIEF	46	1

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2
                  IN AND FOR THE COUNTY OF SANTA CLARA
3
              BEFORE THE HONORABLE LINDA R. CONDRON, JUDGE
                                 ---000---
 5
                                                  ORIGINAL
 б
      The People of the State
 7
      of California
                 Plaintiff,
8
                                                     CC241061
                                          Case No.
           vs.
                                                     PC 290(g)(2)
                                          Charges:
9
      Steve Badue,
10
                 Defendant.
11
12
                                 ---000---
                                                      OCT 1 1 2002
13
14
15
                REPORTER'S TRANSCRIPT OF THE PROCEEDINGS
                           PRELIMINARY HEARING
October 2, 2002
16
17
18
      APPEARANCES:
19
      For the Plaintiff:
                                 \sqrt{} OFFICE OF THE DISTRICT ATTORNEY
                                   BY: Melvin Anderson,
Deputy District Attorney
20
21
                                 OFFICE OF THE PUBLIC DEFENDER
BY: John Overton,
22
      For the Defendant:
23
                                       Deputy Public Defender
24
25
                              Julie T. Serna
                         Official Court Reporter
26
                                 CSR# 7890
27
                                 ---000---
28
```

1		INDEX OF WITNESSES		
2	PEOPLE'S WITNESSES			
3 .	Francis Gallagos		•	
4	Direct Examination Cross-Examination)	by Mr. Anderson by Mr. Overton		[*] 3 7
5	4 - 4	•	•	
6	•			
7	•	00		
8				
9				
10		INDEX OF EXHIBITS		
11		•		
12	PEOPLE'S EXHIBITS		IDENT.	ADMIT.
13	1	Document	5	13
14	2	Document	5	. 13
15	3	Photograph	6	13
16	4	Document	12	13
17	5	Document	12	13
18	. 6 & 7	Documents	13	. 13
19	8	Documents	13	13
20		*		
21	·			
22		00		
23				•
24			•	•
25				
26				
27				
28			-	
				

JULIE T. SERNA, CSR 7890

3

San Jose, California

October 2, 2002

1 2 3

> 4 5

> > 6

7

PROCEEDINGS:

THE COURT: All right. Let's proceed then with the matter of the People versus Badue. And are there any matters that we need to address, counsel, before we begin the presentation of evidence in this case?

All right. Hearing none, Mr. Anderson, call your first witness.

MR. ANDERSON: Francis Gallagos.

9 . 10

11

12

1.3

14 15

16

17

18

19

20

FRANCIS GALLAGOS,

called as a witness on behalf of the People, being first duly sworn, was examined and testified as follows:

THE COURT: Please have a seat on the witness stand and adjust that microphone. Make sure to speak directly into it, and tell us your full name and spell it for my court reporter, please.

THE WITNESS: Thank you. My name is Francis Gallagos. Might first name is F-r-a-n-c-i-s. My last name is G-a-l-l-a-g-o-s.

THE COURT: Thank you. And you may proceed, counsel.

21

23

25

28

DIRECT EXAMINATION

- Q (BY MR. ANDERSON) By whom are you employed?
- 24 A City of San Jose Police Department.
 - Q And what is your title?
- 26 A Custodian of records.
- 27 | Q How long have you been custodian of records?
 - A Approximately three years.

```
1
           And are you familiar with the agency's procedures for
 2
      creating and maintaining sex offender registration
 3
      records?
           Yes, I am.
 5
           Is that part of your duties and responsibilities?
 6
           Yes.
 7
           Are the sex offender registration records created and
 8
      maintained in the ordinary course of business in your
 9
      agency?
10
           Yes, they are.
11
           Who is responsible for creating and maintaining those
12
      registration records?
13
           The fingerprint department is responsible for
      creating the records while I maintain them.
14
15
           Are these records made at or near the time the
16
      registrant comes in to register or when the agency
17
      receives a written change of address?
18
           Yes.
           How are the registration records kept on file?
19
           They are filed by last name first.
20
21
           Does your agency rely on the accuracy of these
      records in advising your police officers as well as other
22
23
      law enforcement agencies as to whether someone is in
      compliance with the sex offender registration laws?
24
25
      Α
           Yes.
26
           Did you check your sex offencer registration records
      for a person named Steve, no middle initial, Badue,
27
28
      B-a-d-u-e?
```

```
Yes, I did.
          And what did you find?
2
     Q
          A registration for the SS 8102.
3
     Α
          And did you also -- is there also in his records a
      statement of no residence?
5
           Yes, there is.
 6
 7
           Do you have those with you?
          Yes, I do.
 8
                MR. ANDERSON: Your Honor, at this point I
 9
10
      would like marked as People's 1 a form SS 8102 dated
      6-18-2000.
11
                THE COURT: Form 8102 will be People's 1 for
12
13
      identification.
                 (People's Exhibit Number 1, document, marked for
14
15
      identification.)
                MR. ANDERSON: People's Exhibit 2 would be a
16
      statement of no residence for a person named Steve Badue
17
      dated June 18th of 2001.
18
                THE COURT: All right. The non-residence status
19
      form will be People's 2 for identification.
20
                 (People's Exhibit Number 2, document, marked for
21
      identification.)
22
            (BY MR. ANDERSON) Do you have any registration forms
23
       for that person, Steven Badue subsequent to June 18th of
24
      2001?
25
      Ä
           No.
26
            When is the defendant's birthday?
27
       Q
```

28

If I may refer to my form? It is 1-4 of 1966.

```
Do you have a photograph that's on file with your
2
     agency of Steve Badue?
3
           Yes, I do.
           Do you have it with you?
5
     Α
           Yes, I do.
           Were those kept in your Megan's file records?
7
     Α
           Yes.
8
                MR. ANDERSON: Your Honor, marked as People's
9
     Exhibit Number 3 would be a photograph of a person named
10
     Steve B-a-d-u-e.
11
                THE COURT: People's 3, the photograph of Mr.,
12
      B-a-d-u-e, Badue.
                (People's Exhibit Number 3, photograph, marked
13
14
      for identification.)
      Q (BY MR. ANDERSON) Did you research your records
15
16
      that -- your agency's records for a determination of
      whether or not the person named Steven Badue had
17
      registered anywhere else in California?
18
           Yes, I did.
19
           And how did you do that?
20
21
           I did a database check on our state California data
22
      base called VCIN. That's V-C-I-N.
23
           And are you required at San Jose to input
24
      registration which occurs in your jurisdiction into that
25
      record?
26
           Yeg.
27
           On a regular basis?
```

That's correct.

28

```
1
           And you rely on the record that you retrieved from
 2
      that database to determine whether or not a person has
      left the jurisdiction and properly registered in other
 4
      jurisdictions in California?
 5
           Yes, we do.
           And what was the result of your search of that
 7
      record?
 8
           No results.
 9
                MR. ANDERSON: Nothing further, Your Honor.
10
                THE COURT: No further questions of this
11
      witness?
                MR. ANDERSON: No further questions.
13
                THE COURT: All right. Cross-examination,
14
      counsel?
15
                MR. OVERTON: Yes, Your Honor. Thank you.
16
                THE COURT: Yes.
17
                          CROSS-EXAMINATION
           (BY MR. OVERTON) Good morning.
18
19
           Good morning.
           You've testified that you have a registration form,
20
21
      an 8102 form; is that correct?
22
           That's correct.
23
           Signed by Mr. Badue; is that correct?
24
      A
           Correct.
25
           And when was that signed?
26
           6-18 of '01.
27
           At that time Mr. Badue was a resident of Santa Clara
28
      County?
```

```
8
           According to the form, yes.
2
          Now, is registration required in one county at a
     time?
3
           That's correct.
     A.
5
           So only the county of which you reside?
           Correct.
6
     A
           And you further testified that you have nothing else
      further signed from Mr. Badue aside from the two forms you
8
9
      testified to earlier?
           That's correct.
10
           If a person is to be in this county and then leave
11
12
      the county is there a requirement to register in the new
13
      county?
           Yes.
14
           And they also are required to register in the old
15
16
      county as well?
17
      Α
           Yes.
18
           Now, is it your testimony that once a person
      registers in a second county that person also has to go
19
20
      back to the first county and say I've left?
           That's correct.
21
22
           Is there -- to your knowledge there's no mechanism
      for the new county to alert the old county?
23
24
           No.
           Or the second to alert the first?
25
26
           No.
27
           You mentioned that -- the District Attorney asked you
28
      about this defendant's birthday. What's the defendant's
```

1 birthday? 2 It's, 290 registrants are to register five days 3 within the birthday. And this gentleman's birthday is when? 5 January the 4th, 1966. 6 You also mentioned that you use a system called VCIN, 7 is that an acronym? 8 That's correct. Q What are the letters? 10 Violent Crime Information Network is the complete 11 name. 12 0 VCIN. Okay. What is the purpose of VCIN? 13 The purpose of VCIN is for all agencies to do a check and see if the individual has moved from different 14 15 agencies. 16 And how would information -- I'm using first and 17 second counties -- first being the original, second one 18 being the one the person had moved to, say, county number two checks VCIN and finds that person has registered and 19 20 then it is that county's duty to write that down somewhere, or how does that work? How does VCIN -- how 22 effectively do they use VCIN in the second county? 23 A Well, it really depends on what you are doing. For 24 example, if agency number one is going to violate the 290, before he does that or she, whoever is doing that, they 25 need to confirm that this person has not registered in a 26

JULIE T. SERNA, CSR 7890

different county by checking VCIN. They will confirm

whether he or she has registered in this new county.

27

28

2 3

5

6 7

8

9 10

11 12

13

14

15

16

17

18 19

20

21

22

23

24 25

26

27

28

Okay. I'm sorry. I was confusing the first and second. You were on the the first county, but you cleared it up for me. Thank you.

As to the first county, if a person is registered in VCIN does that not go for notice of the first county? Is the person still required even if the person's checked VCIN and saw the registration, is the person still required to go back to the first county? I know that's a long question and I apologize.

No problem.

One of the regulations for the 8102 form, I think it's somewhere in the form, it does state that the individual should go to the police agency where they are registered to notify them that they are leaving that county and moving into a different county.

- You use the word "should," was that -- did you have any intention in using that word "they should" go back, must they go back or is recommended they go back?
- The form says it's a requirement.
 - So the first county that checks the VCIN and sees that the person is registered, they still may violate that person even though they know they're registered in another county?
 - I'm not quite sure as far as that regulation goes.
- So it's possible that VCIN can serve as notice to the first county that the person is registered somewhere else?
 - That's correct.

MR. OVERTON: One second, Your Honor, please.

```
1.
           (BY MR. OVERTON) To your knowledge has Mr. Badue
      suffered any failure to register convictions in another
2
3
      county as a result of this case?
          I'm not sure.
                MR. OVERTON: No more questions, Your Honor.
6
                THE COURT: All right. Any redirect, Mr.
7
      Anderson?
8
                MR. ANDERSON: No, Your Honor.
9
                THE COURT: All right. May this witness be
      excused?
10
11
                MR. ANDERSON: Yes, Your Honor.
12
                MR. OVERTON: Yes, Your Honor.
13
                THE COURT: Thank you.
14
           You may be excused. You may be step down at this
15
      time.
                MR. ANDERSON: Your Honor, at this point I would
16
17
      like marked as People's Exhibit Number 5 a proof of prior
18
      conviction for a person named as the defendant, Docket
      Number 208774 as charged.
19
                THE COURT: All right. The record of conviction
20
      in Docket 208774 may be marked as People's 5 -- 4, not
21
22
      five.
23
                THE CLERK: I don't have 4.
                MR. ANDERSON: I have one as the 8102. 2 as
24
25
      the --
26
                THE COURT: The other form.
                MR. ANDERSON: -- date of no residence.
27
28
           3 as photograph. 4 as --
```

```
THE COURT: Right.
               MR. ANDERSON: You're right. You're correct.
2
     I'm sorry.
3
               THE COURT: Conviction and the aforementioned
     document.
5
                (People's Exhibit Number 4, document, marked for
6
7
     identification.)
               MR. ANDERSON: Okay. 5 would be a proof of
8
9
      conviction for the proof of defendant in docket 182210 as
10
      charged in the Complaint.
                THE COURT: I'm sorry that was 182210?
11
                MR. ANDERSON: Yes, Your Honor.
12
                THE COURT: Yes, proof in conviction.
13
                MR. ANDERSON: Would be 182210.
14
                THE COURT: Thank you. Will be People's 5 for
15
16
      identification.
                (People's Exhibit Number 5, document, marked for
17
      identification.)
18
                MR. ANDERSON: People's 6 would be a proof of
19
20
      conviction for the defendant in docket C934945 as charged
      in the Complaint, and 7 would be prior conviction for the
21
      defendant in San Joaquin docket SC0624238 charged in the
22
      Complaint. All of those are certified.
23
                THE COURT: All right. Certified conviction
24
25
      docket C934945 will be marked as People's 6 for
      identification and then Docket SC0624238 People's 7 for
26
27
      identification.
```

28

(People's Exhibits Numbers 6 and 7, documents,

```
13
```

1	marked for identification.)
.2	THE COURT: Anything further?
3	MR. ANDERSON: Yes, one more, Your Honor.
4	Next in order, People's Exhibit 8 would be a 969(b)
5	packet for the defendant which a chronology which
6	indicates the defendant was in custody between June 18th
7	of 2001 and October 11th of 2001, and that certified copy
8 ·	is certified as of March 14th, 2002, and that he was
9	released on October 11th of 2001.
10	THE COURT: As shown to the defense, the
11	defendant's 969(b) packet will be People's 8 for
12	identification.
13	(People's Exhibit Number 8, documents, marked
14	for identification.)
15	MR. ANDERSON: With the admission of the
16	People's Exhibits we would rest.
17	THE COURT: Are you moving the exhibits into
18	evidence at this time?
19	MR. ANDERSON: Yes.
20	THE COURT: Do you have any objection, counsel?
21	MR. OVERTON: No, Your Honor.
22	THE COURT: All right. People's 1 through 8
23	will be admitted at this time.
24	(People's Exhibits Numbers 1 through 8, admitted
25	into evidence.)
26	THE COURT: Any evidence on behalf of the
2 7	defense?
28	MR. OVERTON: That would be for purposes of this
	f .

```
1
     hearing only, Your Honor, no thank you.
2
               THE COURT: All right. Give me a moment to
3
     examine the exhibits.
          All right. Anything further from either side?
               MR. ANDERSON: No. Your Honor.
6
               MR. OVERTON: No, Your Honor.
                THE COURT: Any comments, counsel?
8
               MR. OVERTON: No, Your Honor.
9
                THE COURT: All right. In this matter, based on
10
      the evidence presented at the preliminary hearing I do
11
      find there is sufficient cause to believe that the offense
12
      committed or charged in the Complaint, specifically in
      Count 1, a violation of Penal Code Section 290 Subdivision
13
14
      (g)(2), a felony, failure to register on February 27,
15
      2002, has been committed and that the defendant, Steve
16
      Kent Badue, is guilty thereof. I order him held to answer
17
      to that charge.
18
                MR. OVERTON: Your Honor, excuse me, Your Honor,
19
      he does indicate his middle name is not Kent.
20
                THE DEFENDANT: Yeah, it is not.
21
                THE COURT: It is not Kent, simply Steve Badue?
                THE DEFENDANT: Yes.
22
                THE COURT: All right. That will be the order.
23
24
           And the defendant is ordered to appear on Monday,
      October 15th of this year at 1:30 in Department 24 for
25
26
      arraignment and plea.
27
           Parties stipulate that the exhibits may be released
```

28

to the People for safekeeping until the time of trial?

```
15
               MR. OVERTON: Yes, Your Honor.
                MR. ANDERSON: Yes.
               THE COURT: Thank you.
3
                MR. ANDERSON: October 15th?
                THE COURT: That is what I said.
5
                MR. ANDERSON: Thank you.
6
                (Whereupon, the matter was continued to October
7
     15th, 2002, at 1:30 p.m.)
8
9
                              ---000---
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
```

1	STATE OF CALIFORNIA
2	COUNTY OF SANTA CLARA)
3	
4	I, JULIE T. SERNA, HEREBY CERTIFY: That the
5	foregoing is a full, true, and correct transcript of the
6	testimony given and proceedings had in the above-mentioned
7	action taken;
8	That it is a full, true, and correct transcript of
9	the evidence offered and received, acts and statements of the
10	Court, also all objections of counsel and all matters to
11	which the same relate;
12	That I reported the same in stenotype to the best
13	of my ability, being the duly appointed, qualified and acting
14	official stenographic reporter of said Court, and thereafter
15	transcribed the same into typewriting as herein appears.
16	In said capacity, I have adhered to Civil Code
17	of Procedure Section 237(A)(2), Sixth District Court of
18	Appeal miscellaneous order 96-2, by sealing, through
19	redaction, of all references to juror-identifying
20	information, including but not limited to names,
21	addresses, and telephone numbers.
22	
23	Dated this 10-10-07
24	(Peter 15
25	Julie T. Serna, CSR#7890
26	Official Court Reporter
27	
28	00

SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA LOSE FACILITY

PRELIMINARY EXAMINATION MINUTES, COMMI	TMENT CERTIFICATION
THE PEOPLE OF THE STATE OF CALIFORNIA	Case No. CC241061
tre	
V5.	Date: 10-02-03
Steve Badue	Judge: Linda Tondson
CEN 0250516 0	$$ $$
APPEARANCES:	Reporter: Julie Alma
Deputy District Attorney Mel Anderson	and the stance
Defendant and Attorney John Overton, PD	Custody Status 1C \$100,00
Interpreter for defendant Interpreter for witness	
Motion to exclude/admonish witness(s) granted/denied	
PRELIMINARY EXAMINATION HELD WITNESSES SWORN AND TESTIFIED.	··
	•
Francis Gallages	
	•
PEOPLE'S EXHIBITS: marked/admitted	
1 Copy Registration form 8102 XX6 Cut con	Pr C9349405 XX
2 statement of no Revidence \$ \$7. Cent cons	1Px. 600624238 XX
3 that of Badies 2000 1 20 88 Cut copy	Parket X5
4. Cert. Copies 12 A 0 8 1 / 7 12 129	
7-10.	
DEFENDANT'S EXHIBITS: marked/admitted	
A	
B G	
C	
E	Ö
Waives right to continuous Preliminary Examination. Continued to	
HELD TO ANSWER: It appearing to me from the testimony this day given before me on the prelimi defendant, that the offense of a violation of section(s):	nary examination of the above-named
PC290/6 /2	1
has been completed and that there is a Control of the control of t	
has been committed and that there is sufficient cause to believe the above-named defends to answer to same. Arming allegation(s) found true/not true. Enhancements found to answer to same.	unt guilty thereof. I order that he/she be held
Misdemeanor violation certified to Superior Court	rue/not aue. [] Proofs) found true/not true
☐ HOLDING DENIED as to:	
DEFENDANT ORDERED TO APPEAR IN SUPERIOR COURT on 10-15-02	_a 1:30 D-24
Defendant to remain out of custody on status indicated above.	•
☐ Cash Bail, Bond or SORP ordered transferred to Superior Court. ☐ Exhibits released.	
100	· · · · · · · · · · · · · · · · · · ·
REMANDED to custody of DOC until next appearance. Bail \$ 00,006	•
ORDERED RELEASED on O/R on S/O/R	
I certify that the foregoing is a true and correct record of the proceedings had before my thi	s date in said case.
TIME 1987	MIKW.
I certify the foregoing is a true copy of the Judgement/Order JUDGE OF THE S	UPERIOR COURT
rendered on the above date by the above named Judge.	
Clerk of the above named Court. By	Deputy

JAIL

SUPERIOR COURT OF CALIFOR. A COUNTY OF SANTA CLARA SAN JOSE FACILITY COMPLAINT FOR ARREST WARRANT(S)

STEVE NMN BADUE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff.

FELONY COMPLAIN

DA NO: 020305786

* SB WARR *

PEN: BON 149 Jlm #3447

Defendant(s)

The undersigned is informed and believes that:

STEVE NMN BADUE (1/4/1966),

aka STEVE KENT BADUE,

TRANSIENT.,

ec 241.00)

COUNT 1

On or about February 27, 2002, in the County of Santa Clara, State of California, the crime of FAILING TO REGISTER AT BIRTHDAY, WITH A PC 290 PRIOR CONVICTION OR JUVENILE ADJUDICATION, in violation of PENAL CODE SECTION 290(g)(2), a Felony, was committed by STEVE NMN BADUE who did having been previously convicted of a violation of Penal Code section 290 in the California Superior Court, Santa Clara County (208774), and while required to register under Penal Code section 290 for a violation of section 314.1 of the Penal Code, in the Superior / Municipal Court, Santa Clara and San Joaquin County (182210, C9349405, SC062423A), California, willfully failed, within 5 working days of his/her birthday, to update his/her registration with the chief of police of the city in which he/she temporarily resided, and, if he/she had no residence, was located, San Jose, including verifying his/her name and address(es), and temporary location(s), on a form as required by the Department of Justice.

PRIOR CONVICTION (PC 667.5(b))

It is further alleged within the meaning of Penal Code section 667.5(b) that prior to the commission of the offense(s) charged above, the defendant, STEVE NMN BADUE, was convicted of a felony:

Possession of a Controlled Substance, Health and Safety section 11350, California Superior Court, Santa Clara County (C9947075)

and, for that offense, the defendant served a prison term, which was separate from any other prison term alleged in this pleading, and since serving that term, the defendant has not remained free of both prison custody and the commission of an offense resulting in a felony conviction for a period of five years.

Further, attached and incorporated by reference are official reports and documents of a law enforcement agency which the complainant believes establish probable cause for the arrest of defendant STEVE NMN BADUE, for the above-listed crimes. Wherefore, A WARRANT OF ARREST IS REQUESTED.

Complainant therefore requests that the defendant(s) be dealt with according to law. I certify under penalty of perjury that the above is true and correct.

Executed on March 1, 2002, in SANTA CLARA County, California.

Warrant received for service by:

on 3/5/02

Cash or Bond \$ 100,000

JUDGE OF THE SUPERIOR COURT

R. MARTINEZ #2636 JEN #3412

Martinez 2836 (Martinez 2836)

SJPD (408) 277-4102 020500805 S SEIDEL/ D293/ FELONY/ rv

ROBERT L. AMBROSE

SUPERIOR COURT OF CALIFOR A San Jose Facility

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

FELONY CASE SUMMARY

DA NO: 020305786 CEN

* SB WARR *

STEVE NMN BADUE (1/4/1966), aka STEVE KENT BADUE, TRANSIENT, ,

Defendant(s)

CASE SUMMARY

Count	<u>Charge</u>	Charge Range	<u>Defendant</u>	Allegation	Alleg. Effect
1	PC290(g)(2)	16-2-3	STEVE NMN BADUE		
	Prior/Alleg:		STEVE NMN BADUE	PC667.5(b)	1 yr

JPERIOR COURT OF CALIFORN'S COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

10/15/02

DA NO

CEN

02505160 SB HELD 10/15/2002

020305786

INFORMATION NO. CC241061

FILED

OCT 1 0 2002

STEVE NMN BADUE (1/4/1966), aka STEVE KENT BADUE, UNKNOWN, ,

Defendant(s)

INFORMATION SUMMARY

Allegation

Alleg. Effect

PC29

Count

Charge PC290(g)(2) Prior/Alleg: Charge Range 16-2-3 <u>Defendant</u> STEVE NMN BADUE

STEVE NMN BADUE

PC667.5(b)

1 yr

The District Attorney of the C ty of Santa Clara, by this Information

COUNT 1

On or about February 27, 2002, in the County of Santa Clara, State of California, the crime of FAILING TO REGISTER AT BIRTHDAY, WITH A PC 290 PRIOR CONVICTION OR JUVENILE ADJUDICATION, in violation of PENAL CODE SECTION 290(g)(2), a Felony, was committed by STEVE NMN BADUE who did having been previously convicted of a violation of Penal Code section 290 in the California Superior Court, Santa Clara County (208774), and while required to register under Penal Code section 290 for a violation of section 314.1 of the Penal Code, in the Superior / Municipal Court, Santa Clara and San Joaquin County (182210, C9349405, SC062423A), California, willfully failed, within 5 working days of his/her birthday, to update his/her registration with the chief of police of the city in which he/she temporarily resided, and, if he/she had no residence, was located, San Jose, including verifying his/her name and address(es), and temporary location(s), on a form as required by the Department of Justice.

PRIOR CONVICTION (PC 667,5(b))

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Possession of a Controlled Substance, Health and Safety section 11350, California Superior Court, Santa Clara County (C9947075)

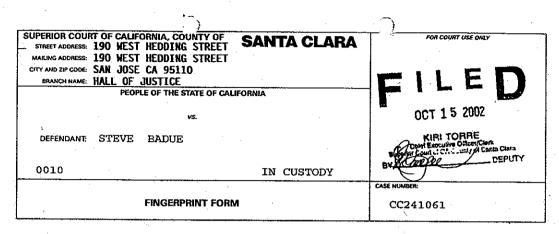
and, for that offense, the defendant served a prison term, which was separate from any other prison term alleged in this pleading, and since serving that term, the defendant has not remained free of both prison custody and the commission of an offense resulting in a felony conviction for a period of five years.

Document 16-2

Pursuant to Penal Code Section .054 through 1054.7, inclusive, the ple request that, within 15 days, the defendant and/or his/her attorney disclose: (A) The names and addresses of persons, other than the defendant, he/she intends to call as witnesses at trial, together with any relevant written or recorded statements of those persons, or reports of the statements of those persons, including any reports or statements of experts made in connection with the case, and including the results of any physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer as evidence at the trial. (B) Any real evidence which the defendant intends to offer in evidence at the trial. This request is a continuing request, to cover not only all such material currently in existence, but all material which comes into existence to the conclusion of this case.

> George W. Kennedy District Attorney

Deputy District Attorney



INSTRUCTIONS

Immediately following arraignment in superior court of a defendant charged with a felony or arraignment of a defendant by a municipal court judge sitting as a superior court judge, the court shall require the defendant to provide a right thumbprint on this form. In the event the defendant is convicted, this form shall be attached to the minute order reflecting the defendant's sentence and shall be permanently maintained in the court file. Please see Penal Code section 992 for further information, including when the defendant is physically unable to give a right thumbprint.

For a proper imprint and durable record, this form should be printed on paper that meets California Department of Justice specifications: a 99 pound white tab card or 100 pound white tab stock 0.0070 inch thick (0.0066 through 0.0074 inch is acceptable). Paper smoothness should be 100-140 sheffield units. The form should be printed with the grain left to right.

1. The box to the right contains the defendant's		
right thumbprint		
other print (specify):		
2. The print was taken on <i>(date)</i> :	.	
10/15/2002 3. The print was taken by		
a. Name: JOHNSON b. Position: DEPUTY		
c. Badge or serial No.: 1853	•	

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☐ Grante	d ☐ Den ☐ Subm ☐ OC	☐ Subm on rept ☐ Found		☐ BW Set A	ide Recalled	To Issue
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EOPLE VS. ST	EVE BADUE		01/04/1966	CAC0655444	
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☐ WFA ☐ Arr	d ☐ Amended compltWV	Arr Plea DDC Drob/S	Sent 🔲 Interp		
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☐ NG ☐ Ente	red by CRT 🔲 NGBRI / Adv	PSet Prelim PTC S/E		stated 🔲 Bail Exonera	ated
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☐ Walves Con	stit Rights Written Waiv	er filed PC17 REDUCTION	Waives Arbuckle	Harvey Stip	
COP PLEAD	S GUILTY NOLO	ONTENDERE to charges & admits er	hs/priors (see below)	☐ Factual Basis found	☐ Findings stated
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Superior Court of California County of Santa Clara

Hall of Justice Criminal Division 190 West Hedding Street San Jose, California 95110 FILED

DEC 0 4 2002

KIRI TORRE
CHIEF TORRE

Dr. James Missett, Ph.D. 1187 University Drive Menlo Park, CA 94025

IN RE:

APPOINTMENT AS MEDICAL EXAMINER UNDER SECTION 1369(a) OF THE PENAL CODE

SUBJECT: Case #CC241061

THE PEOPLE OF THE STATE OF CALIFORNIA VS. STEVE BADUE

Charge(s): PC 290(g)(2) Attorney: Randy Danto Custodial Status: IN Interpreter Needs: N/A CEN No.: 97002463 PFN No.: BQN149 M

JANE LINN

Dear Doctor.

Please be advised that the Honorable Mailyn Pestarino Zecher, Judge of the Superior Court, duly appointed you to perform an examination upon the subject defendant pursuant to the above-cited section of the Penal Code of the State of California.

Pursuant to said examination, please file your report with the Court no later than 9:00 A.M. on Friday, December 20, 2002 in Department 29A. If you have already been appointed on this case, please contact the Court at (408) 299-3291. You will not be paid to conduct another report unless so ordered by the Court to do so.

Please include your conclusion as to this question which is before the court at this time:

A defendant is mentally incompetent for purposes of this chapter if, as a result of mental disorder, he/she is unable to understand the nature of the proceedings taken against him/her and to assist counsel in the conduct of a defense in a rational manner.

Thank you for the professional consideration.

Officially,

KIRI TORRE, Chief Executive Officer/Clerk

/ji cc: File

NOTE: It is necessary to show this letter to the County Jail authorities to gain entrance.

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CONFIDENTIAL

MAY NOT BE EXAMINED WITHOUT COURT ORDER

THE PEOPLE

VS

STEVE KENT BADUE

COURT OF APPEAL NUMBER:

CASE NUMBER:

CC241061

MEDICAL / PSYCHIATRIC EXAMINATION UNDER SECTION 1369(a) OF THE PENAL CODE

SEALED PAGES 32

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GEORGE W. KENNEDY 052527 STEVEN DICK, DEPUTY DISTRICT ATTORNEY State Bar number 181420 COUNTY OF SANTA CLARA 2 70 WEST HEDDING STREET SANTA CLARA, CA 95110 3 TELEPHONE: (408) 792-2652 FEB 03 2003 ATTORNEYS FOR THE PEOPLE KIRI TORRE 5 JOSE OLIVAREZ DEPUTY SUPERIOR COURT OF THE STATE OF CALIFORNIA 8 COUNTY OF SANTA CLARA 9 THE PEOPLE OF THE STATE OF CALIFORNIA. NO CC241061 10 11 Plaintiff, PEOPLE'S PROPOSED VOIR DIRE QUESTIONS 12 -VS-13 STEVE BADUE, 14 15 Defendant(s). 16 The People respectfully request that the court include the following questions in its preliminary questioning of the jury. 17 Ability to Sit as a Juror (Physical) 18 Does anyone have any problems with either their sight or a) 19 their hearing which will make it difficult for you to either hear witnesses as they testify or see exhibits 20 which are admitted into evidence? 21 bì Is anyone taking any medication which might interfere 22 with their ability to listen to the evidence, perhaps because it causes drowsiness? 23 Does anyone suffer from any sort of physical problem, c) 24 such as chronic lower back pain, which would prevent you 25 from sitting the hours which we require as a juror? Obviously, jurors will be permitted to stand and stretch 26 as necessary, but if anyone is suffering from any 27 condition which causes pain, that would interfere with 28 your ability to concentrate and give full consideration

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to all of the evidence.

Ability to Sit as a Juror (Psychological) 2.

- From time to time we have people who are called for jury duty who say that they are unable to participate as a juror, to sit in judgment on another human being or to make a decision resulting in a criminal conviction. Sometimes these people say they are prevented for religious reasons, or other personal reasons. Whatever the reason, which you are certainly entitled to hold, we need to know about that. It is the function of the jury to listen to the evidence and then come to a decision as to whether or not the People have proven their case beyond a reasonable doubt. That is the jury's function. Whether you refer to this as sitting in judgment or not, it is the jury's duty. Now, is there anyone who feels that they cannot participate, for whatever reason?
- Will you base your decision in this case on the evidence b) presented and the law given to you, and not on any sympathy for or prejudice against either the Defendant or the victim?

Jury Experience

Has anyone ever sat on a jury before? a) Was it civil or criminal? When was that? Did the jury come to a verdict? Is there anything about that experience which would make it difficult for you to be a juror in this

Expert

- Does anyone have medical training? In the mental health a)
- b١ Does anyone have any legal training, either in law school, or as a paralegal, or as part of another degree they were pursuing? Has anyone worked in a legal office or in some manner connected with the law or its application? It is anticipated that there will be an expert testifying in this case. If you have some particular expertise yourself, you are to set aside what you thought from your own training, and consider the testimony of the experts. In other words, it is not

		proper for you to substitute your own opinion for that of
		the experts. Does everyone understand?
5.	Cont	act with the Criminal Justice System
	a)	Does anyone have a close friend or a family member, or
	٠,	you yourself, who has been a witness to, a victim of, or
		charged with a criminal offense?
	b)	If you were a victim, did you report the crime to the
		police? How did you feel about their response? Was it
		a Santa Cruz County agency? Could you be a fair juror?
	c)	If charged with a criminal offense, was the person
		treated fairly? Could you be a fair juror?
6.	View	of Police Officers
	a)	How do you view evidence given by police officers? Will
		you use the same standard in judging the credibility of
		an officer as you would any other witness?
	b)	Is there anyone who would tend to evaluate the testimony
		of a police officer more critically than any other
		witness?
	c)	Does anyone expect the police to make a "perfect"
		investigation, or present an investigation like those on
		television, such as "Columbo" or "Murder, She Wrote"?
	d)	Would it matter to you if the defendant was a police
		officer or a former police officer?
7.	Fol]	owing the law
	a)	Does everyone agree that a juror's duty is to follow the
		law. Does everyone agree to do that, even if the law is
•		not one in which you personally agree.
8.	Sent	encing
••	a)	Do you understand that consideration of the possible
	-,	consequences of this trial, such as sentencing, are not
		proper matters for you to consider in determining whether
•		or not the defendant is guilty?
		a. Will each of you agree that sentencing is not to play
		any part whatsoever in your evaluation of the evidence?
		b. Is there anyone who could not do so?
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- One of the jury instructions states that the testimony of a) a single witness is sufficient to prove any fact if you believe the witness. Will you be able to follow that instruction?
- b١ If a witness testifies about a particular element of this offense and you believe the witness so that you are convinced of the proof of that element beyond a reasonable doubt, would you require any further proof of that element? Would you require that the People present more witnesses or present documents to corroborate that testimony even though you were already convinced beyond a reasonable doubt that it was proved by the testimony of one witness?
- c) Could you convict on the word of one witness?
- Is it understandable that an offense, such as violence against your partner, would not happen in a public area, but would occur in the privacy of your home. If only those incidents that were witnessed by a third party were prosecuted, only a small number of batters would be held responsible for their actions in a court of law? Could you convict on the word of a victim alone?

Circumstantial Evidence

- Is there anyone who could not find a person guilty based on circumstantial evidence alone? If so, why not?
- Do you all understand that the law gives the same weight to both direct and circumstantial evidence? Can you all follow the law as it is instructed to you?

Opinion of Defendant

- Based on the defendant's age or appearance, would any of you feel any sympathy, pity, or bias for or against the defendant?
- b) If the defendant testifies, do any of you feel his testimony is likely to be more accurate because he is the
- Do you understand that all the witnesses must be judged c) using the same standard and that based on each witnesses testimony you are to determine how much weight to give his or her statement?

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13. Burden of Proof

- The burden in this case is on the People. a) must prove each element of the crime charged beyond a reasonable doubt. I will give you further instructions regarding the legal definitions of beyond a reasonable doubt, but in essence it means just what it says: that is a reasonable doubt, a doubt for which you can give a concrete reason. It does not mean beyond all possible doubt or beyond a shadow of a doubt, or any of those other phrases which you may have heard on television or elsewhere. A burden such as that would be impossible to meet; it is simply too high and is not the standard in our system of justice. Do you all understand that? Do you understand why that is? Everything in human affairs is subject to some doubt. That is not what we mean here.
- ъ١ Sometimes we have people who say that could not vote for a verdict of guilt unless they saw something with their own two eyes. Well, let me first say that that is an impossibility, because if you saw a crime then you would be a witness in this trial, and not eligible to be a juror, so that would never be possible. understand?
- c) Now, beyond a reasonable doubt also does not mean a mere conflict in the evidence. Frequently, there are cases where one side claims one thing and the other side claims the other. If the mere fact of a conflict equaled beyond a reasonable doubt, then no case would ever be decided. It is your job to consider the evidence, evaluate the conflict, if there is one, and decide who is telling the As a juror, you have the right to disregard testimony, if you feel it is untruthful, or unsupported by other evidence, or simply not believable.
 - Does everyone understand that when there is a conflict, it would be your job as a juror to resolve that conflict, to the extent that you are able?
 - Does everyone understand that the simple fact that there may be a conflict in the evidence does not automatically equal reasonable doubt?

	 In other words, you weigh and consider and evaluate
1	all of the evidence.
2	14. Sex Registration
-	a) How many of you have heard of Megan's Law? What is your
3	understanding of the law?
4	b) Do you think that it should be a public record that certain
5	people are required to register as a sex offender?
	c) Has anyone ever used Megan's Law to see if there are sex
6	offender's in their neighborhood?
7	d) During the course of the trial you may not find out why the
8	defendant has to register as a sex offender. Does anyone
	feel they must know why the defendant has to register?
9	e) Does anyone feel that the registration law should exist at
10	all? Should it be abolished?
11	f) There are very stringent requirements for sex registrants.
12	Can you convict the defendant even if you feel the law is
	too stringent?
13	g) Does anyone know a person who has to register as a sex offender?
14.	h) The defendant must willfully fail to register, which is not
15	intentionally fail. This crime is a general intent crime,
16	which means the person does not have to intentionally not
	register. If the defendant knew he had to register, and
17	forgot, or failed to register he is guilty of the crime.
18	Does anyone feel this definition of Willful is too
19	stringent? Will you be able to follow the law as read to
20	you by the Judge?
21	Dated: DECEMBER 3, 2002
22	2232223 3, 2002
23	
24	Respectfully submitted,
24	GEORGE KENNEDY DISTRICT ATTORNEY
25	S-DOMMON COLLOGATION
26	
27	Jt M.
	STEVEN DICK DEPUTY DISTRICT ATTORNEY
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GEORGE W. KENNEDY, DISTRICT ATTORNEY State Bar No. 052527 STEVEN I. DICK, DEPUTY DISTRICT ATTORNEY COUNTY GOVERNMENT CENTER, WEST WING 70 West Hedding Street FED 03 2003 San Jose, CA 95110 KIRI TORRE Telephone: (408) 299-7400 JOSE OLIVAREZ 5 Attorneys for The People IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CLARA 8 9 THE PEOPLE OF THE STATE OF CALIFORNIA, CASE NO.: CC241061 10 Plaintiff, 11 12 TRIAL BRIEF STEVE BADUE, 13 **DATE: 2-3-03** 14 TIME: 9:00 A.M. Defendant(s). DEPT: 24 15 16 17 STATEMENT OF PACTS 18 19 The defendant must register pursuant to Penal Code section 290 due to a prior conviction for 20 violating Penal Code 314, Indecent Exposure. He has a prior conviction for violating Penal Code 21 22 section 290 from 1998. 28 In 2000 the defendant was convicted of violating Health and Safety Code section 11350, 24 Possession of a Controlled Substance. He was sentenced to serve 16 months in the Department of 25 Corrections. 26 46

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24 25 26 The defendant was released from custody but did not do well on parole. He was arrested on June 28, 2001 on a parole violation and was given a six month eligible sentence. The defendant was released from custody on October 10, 2002 and was released to Santa Clara County. The defendant had another warrant issued for his arrest because he did not report to his parole officer. He also did not register pursuant to Penal Code section 290 within 5 days of his release from custody. He further failed to complete his annual registration pursuant to Penal Code section 290 on his birthday, January 4.

The defendant was eventually arrested on March 6, 2002 in Stockton, California. Upon his arrest the defendant provided a false name and birthday to Officer Keo of the Stockton Police Department. The defendant was charged and convicted out of San Joquin County for violating Penal Code section 148.9, providing false information to a peace officer.

The defendant is now accused of violating Penal Code section 290, Failing to Register as a Sex Offender with a prior conviction of Failing to Register as a Sex Offender, due to missing his annual update. He also is accused of suffering a prison prior in violation of Penal Code section 667.5(b).

<u>II</u> WITNESS LIST

- . Officer Keo, Stockton Police Department
- 2. Phil Thompson, Stockton Police Department
- 3. Michael Valverde, San Jose Police Department, Central Identification Unit
- 4. Richard Peretti, San Jose Police Department, Central Identification Unit
- 22 5. Francis Gallegos, San Jose Police Department
- 6. Raul Martinez, San Jose Police Department
 - 7. Theresa McDaniels, Parole Officer

orge W. Kenned District Attorney unty of Santa Clara Jose, California 2511

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1 2	DOCUMENTARY EVIDENCE
2 3	1. Certified Booking Sheets
	2. 969B Packet
3	3. Fingerprint Identification Packet
4	4. Certified SS-1802 Form
	5. Certified VCIN
8	6. Certified Prior Conviction
ş	IV.
g	MEMORANDUM OF POINTS AND AUTHORITIES
8	A. DEFENDANT CAN BE IMPEACHED WITH HIS PRIOR CONVICTIONS
1 00	
1 6 1	Should the defendant elect to testify, the prosecution may seek to introduce evidence of
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134	was convicted of the following crime of moral turpitude: violating Penal Code section 314, Incdecent
15 14	Hypother (one Dead - D. H. Transa
16 15	The defendant also provided false information to a peace officer in 2002 and was convicted of
17 16	violating Penal Code section 148.9. The underlying facts of this offense are admissible for two
18 17 19	purposes. First, to show the defendant willfully failed to register. The defendant lied to the officer
18 20	
1 <u>9</u> 21	reason. Second to attack the defendant's credibility.
29 ₂	
213	CURRENT CASE IS PAPPED BY POVEN FOR THAT THE
2 2 4	ESTOPPEL
235	During informal discussions at a previous trial setting date it was suggested that the defendant
226	believed that his case was barred due to Double Jeopardy concerns due to his conviction in San Joquin
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2 8 8	County. The People have obtained a copy of the certified prior arising out of the defendant's conviction
orge W. Kennedy District Attorney only of Santa Clara lose, California 95110	48

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24 23 28 and it appears he was never charged with violating Penal Code section 290. Therefore, Double Jeopardy would not apply.

The defendant also suggested that he admitted a Violation of Probation in San Joquin County and that Double Jeopardy should also be barred from prosecution for violating Penal Code section 290 out of Santa Clara County. The People have been unable to obtain any confirmation that the defendant did have a Violating of Probation due to failing to register. Assuming this did take place, Double Jeopardy, and Collateral Estoppel, would not bar prosecution of a new criminal offense. The United States Supreme Court, California Supreme Court, and Appellate Courts have all held that due to the procedural nature of Violation of Probations and for public policy concerns, Double Jeopardy and Collateral Estoppel do not bar prosecution of new criminal offense after a person has been found to violate his or her probation based on the facts of the new case. (Johnson v. United States (2000) 529 U.S. 694, 120 S.Ct. 1795, 146 L.Ed. 727; Lucido v. Superior Court (1990) 51 Cal.3d 335, 795 P.2d 1223, 272 Cal.Rptr. 767; Chamblin v. Municiple Court (1982) 130 Cal.App.3d 115, 181 Cal.Rptr. 636; People v. Carter (1975) 48 Cal. App. 3d 369, 121 Cal.Rptr. 677).

EVIDENCE SHOWING THE DEFENDANT WILLFULLY FAILED TO REGISTER IS <u>ADMISSIBLE</u>

One of the elements of Penal Code section 290 is that the defendant must willfully have failed to register as a sex offender. In order to prove this element the people intend to call the defendant's parole officer to testify that the defendant was released from prison in October, 2002 and that he never reported to his parole officer. This parole violation provided the defendant incentive to not register. He did not want law enforcement to find him so he would not have to go back to prison.

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The People also intend to call Officer Keo of the San Joquin Police Department to testify that the defendant lied to the officer about his name and date of birth.

THE COURT MAY TAKE JUDICIAL NOTICE OF IT'S FILE

The trial court may take judicial notice of it's file. (Evidence Code sections 450, 451, 452). The People will ask the court to take Judicial Notice of two items. The first is that the defendant stated on his arraignment that his name is Steve Badue with a date of birth of January 4, 1966,

Second, that the a violation of Penal Code section 314.1 requires a person to register for life pursuant to Penal Code section 290.

THE DEFENDANT SHOULD NOT BE ALLOWED TO ARGUE THAT THE CRIME SHOULD BE MISDEMEANOR.

Penal Code section 290 (g)(2) with a prior conviction for violating Penal Code section 290 is an irreducible felony. The defendant should not be allowed to argue that the crime should be reduced to a misdemeanor.

F. REQUESTED JURY INSTRUCTIONS

The People submit the following proposed jury instruction.

The Defendant is accused in Count ____ of the Information of having violated Penal Code section 290(G)(2), a felony. Every person who, having been previously convicted of a felony sex offense, namely, Indecent Exposure, and previously was convicted of Failing to Register as a Sex Offender, willfully fails to inform in writing, within 5 working days of his birthday, to update his registration with the chief of police of the city in which he temporarily resided or was located, is guilty of violating Penal Code section 290(g)(2) of the Penal Code, a felony.